

Borrower Class Says \$57M ResCap Set-Aside Isn't Enough

By **Maria Chutchian**

Law360, New York (August 8, 2013, 6:47 PM EDT) -- A class of residential mortgage borrowers on Thursday attacked Residential Capital LLC's Chapter 11 plan, saying it improperly aims to keep them from suing nondebtor entities and that the \$57.6 million set aside for borrower claims isn't enough.

In an objection to ResCap's disclosure statement, which is scheduled to be considered by U.S. Bankruptcy Judge Martin Glenn on Aug. 21, the borrowers said they planned to challenge the plan itself when the time comes.

"Plaintiffs intend to object to such a plan because of improper third-party releases and injunctions and insufficient funding for borrower claims," they said in the court filing.

The plaintiffs are borrowers who **launched a putative class action** against ResCap affiliate GMAC Mortgage LLC in April 2012 alleging it received kickbacks from a hazard insurer that forced homeowners to obtain expensive policies.

Lead plaintiff Landon Rothstein said GMAC bought force-placed insurance coverage for his Texas home from Balboa Insurance Co., which in turn paid kickbacks to GMAC. The kickbacks inflated GMAC's premiums, the cost of which was passed on to Rothstein in the form of higher reimbursement charges, the suit claimed.

Balboa's kickbacks were falsely labeled as commissions and funneled through a bogus GMAC subsidiary called GMAC Agency Marketing, according to the complaint.

The plaintiffs are also tangled up in another dispute with former ResCap parent Ally Financial Inc. In December, the government-backed auto lender sought court protection from alter ego and veil piercing claims in the class action. The borrowers said Wednesday that the parties have been trying to reach a resolution on the matter but have not been able to come to terms yet.

The dispute is over whether Rothstein's claims are derivative, according to the borrowers' filing.

Before its disclosure statement hearing, ResCap will seek approval of a deal it struck with Financial Guaranty Insurance Co. to slash the bond insurer's claim by nearly \$5 billion. The fallen mortgage servicer received **pushback** from Freddie Mac earlier this month.

Freddie Mac said the settlement, which would reduce the claim from \$5.5 billion to \$596.5 million, would terminate insurance policies guaranteeing the payment of principal and interest on mortgage-backed securities it holds that were issued or serviced by ResCap. Freddie Mac has also rebutted the settlement's finding that FGIC trustees discharged their fiduciary duties to FGIC beneficiaries.

ResCap **filed for bankruptcy** protection in May 2012, listing \$15.7 billion in assets and \$15.3 billion in debt, with a plan to sell most of its assets to a Fortress Investment Group LLC unit. The move allowed Ally, which recently agreed to fork over \$2.1 billion to avoid liability for ResCap's downfall, to shed ResCap in the wake of the latter's failure to make a major bond payment.

The plaintiffs are represented by Mark A. Strauss and J. Brandon Walker of Kirby McInerney LLP,

and Mary E. Augustine and Garvan F. McDaniel of Bifferato Gentilotti.

ResCap is represented by Gary S. Lee, Lorenzo Marinuzzi, Stefan W. Engelhardt, Todd M. Goren and Samantha Martin of Morrison & Foerster LLP, and Steven J. Reisman and Michael Moscato of Curtis Mallet-Prevost Colt & Mosle LLP.

The bankruptcy case is In re: Residential Capital LLC, case number 1:12-bk-12020, in the U.S. Bankruptcy Court for the Southern District of New York.

--Additional reporting by Max Stendahl and Kurt Orzeck. Editing by Jeremy Barker.